

Objection (the "Motion") [DE 4291]. The Court heard oral argument on the Objection and the Motion on December 20, 2007 and requested supplemental briefing on the following:

- 1) Are the funds that John Dutkin seeks to recover as part of his claim against USACM already at issue as part of the pending interpleader action;
- 2) Did the Court enter an order under which USACM could have and/or should have honored the checks written to John Dutkin that were rejected by USACM post-petition;
- 3) Is Dutkin's claim entitled to secured status based upon a constructive trust theory, or because USACM might have been acting as a fiduciary?

A. The Underlying Facts.

Shortly before USACM filed its petition, Dutkin executed three assignments that transferred his direct lender interests to third parties. In return, he received three checks from USACM totaling \$56,120.90. Those checks bounced, however, because USACM had filed its petition by the time Dutkin deposited them. Dutkin filed Proof of Claim 10725-01395, which asserted a secured claim for \$56,120.90.

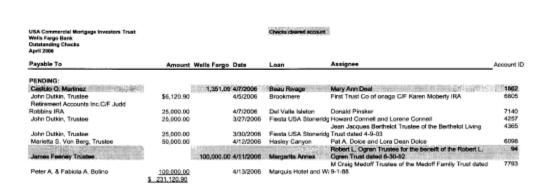
B. The Disputed Funds Are Already At Issue In the Interpleader.

The USACM Trust has determined that the \$56,120.90 in which Dutkin claims an interest is deposited in the related interpleader action (Adv. No. 06-1146). An excerpt from Exhibit C to the Status Report Re Disbursement of Funds In Interpleader Action e-filed on July 30, 2007 by USACM lists the three Dutkin assignments as "unresolved claims":

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[Adv. No. 06-1146, DE 139, p. 3] Also, the Status Report indicates that the funds related to these assignments and other claims totaling \$323,021.51 were deposited to the Court's Registry Account. [*Id.*] Kathy Moore in the Clerk's Office has confirmed that the entire \$323,021.51 is still deposited in the Court's Registry Account.

Dutkin, through his attorney George Frame, recently filed a stipulation that relates to the \$6,120.90 assignment to First Trust Co. [Adv. No. 06-1167³, DE 333] and a motion for summary judgment related to the other two assignments [Adv. No. 06-1167, DE 330]. On February 7, 2008, USACM filed a limited opposition to the motion for summary judgment, asserting only that the Court should order that the disputed funds be paid from the Registry Account and not by the Debtor. [Adv. No. 1167, DE 337].

Dutkin does not have a secured claim against USACM. If Dutkin prevails in the interpleader action, he will receive the disputed funds from the Registry Account and will have no claim against USACM. If the assignees prevail in the interpleader action, Dutkin will receive the return of his direct lender interests. In that case, he may have a general unsecured claim depending upon how the loans in which he is invested perform.

³ Adv. No. 06-1167 and Adv. No. 06-1146 were consolidated by order dated September 22, 2006 [Adv. No. 06-1146, DE 30]. According to the Clerk's Office, the Registry Account relates to 06-1146.